

Exhibit 58

**Transcript of the Testimony of
Brian Manley**

Date:

June 20, 2018

Case:

STATE OF TEXAS vs UNITED STATES OF AMERICA

Brian Manley

June 20, 2018

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF TEXAS
3 BROWNSVILLE DIVISION
4
5 STATE OF TEXAS, et al.,)
6 Plaintiffs,)
7)
8 VS.) CASE NO. 1:18-cv-00068
9)
10)
11 UNITED STATES OF AMERICA,)
12 et al.,)
13 Defendants)
14)
15 and)
16)
17 KARLA PEREZ, et al.,)
18 Defendant-Intervenors)

13 ORAL DEPOSITIONS

BRIAN MANLEY

JUNE 20, 2018

JUNE 20, 2018

16 ORAL DEPOSITION OF BRIAN MANLEY, produced as a
17 witness at the instance of the Plaintiff, and duly
18 sworn, was taken in the above-styled and numbered cause
19 on June 20, 2018, from 1:13 p.m. to 2:40 p.m., before
20 Christi Sanford, CSR in and for the State of Texas,
21 Registered Professional Reporter and Certified Realtime
22 Reporter, reported by machine shorthand, at the Austin
23 Police Department, 715 East 8th Street, 5th Floor,
24 Austin, Texas, pursuant to the Federal Rules of Civil
25 Procedure and the provisions stated on the record.

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APPEARANCES

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9 Reported by:

10 Christi Sanford, CSR, RPR, CRR

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1 A. I don't believe we track that.

2 Q. Okay. So you don't know one way or the other?

3 A. I don't believe we track that.

4 Q. Right. Okay. But in terms of whether you
5 employ DACA recipients, you don't know if you do or if
6 you don't? You just don't know one way or the other?

7 A. Correct.

8 Q. Okay. Fair enough.

9 Okay. Paragraph 9 talking about APD's
10 mission. What is the mission of APD?

11 A. The mission of the Austin Police Department is
12 to be trusted and respected by all Austin residents and
13 to collaborate with our community to make Austin the
14 safest city in America.

15 Q. What about enforcing the law? Is that part of
16 APD's mission?

17 A. Well, to make Austin the safest city in America
18 implies that we will, you know, enforce the law to make
19 sure that we're keeping our city safe.

20 Q. Okay. In pursuit of its mission to keep people
21 safe, does APD have to abide by the duly enacted laws?

22 A. Yes.

23 Q. Why is that important?

24 A. Well, because we're a law enforcement agency,
25 we're required to abide by whatever laws are put upon

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1 us.

2 Q. Okay. Even if that law may make the community
3 less safe, in your opinion?

4 A. Correct.

5 Q. Can you think of any examples of that?

6 A. Of what?

7 Q. Of a law that, in your opinion, makes a
8 community less safe, but APD still has to comply with
9 that.

10 A. No.

11 Q. Okay. What about SB 4?

12 A. Which part?

13 Q. The part that prohibits police departments from
14 enacting policies that would prevent officers from
15 inquiring about immigration status.

16 A. Correct. Our policy allows officers to ask
17 immigration status.

18 Q. Right. And you were -- when SB 4 was being
19 debated, you were -- you testified against SB 4, right?

20 A. Yes, I did.

21 Q. And part of your testimony was that, in your
22 opinion, SB 4 would make communities less safe?

23 A. So -- yes. So the concern is if local law
24 enforcement is seen as an arm of the immigration
25 enforcement, that we might have individuals that feel

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1 like they can't come forward if they've been victimized
2 or they witnessed somebody else be victimized. And so,
3 yes, that -- that is something that I testified to at
4 the legislature, and I do believe that it is a concern
5 that if people feel like they have to live in the
6 shadows, then they may be less safe as a community
7 within the city and then that may impact the overall
8 city's safety.

9 Q. Understand. And even though you think SB 4 may
10 make Austin less safe, you, as chief of police, are
11 still required to comply with the terms of SB 4, right?

12 A. Absolutely.

13 Q. Okay. And that's because SB 4 is a duly
14 enacted law and, as a law enforcement officer, you have
15 an obligation to comply with duly enacted laws?

16 A. Correct.

17 Q. All right. Even if that duly enacted law, in
18 your opinion, may make a community less safe?

19 A. Correct.

20 Q. All right. Okay. Let's look at paragraph 11.
21 Specifically, I want to ask you about the last sentence
22 and the concern over the underreporting of crime. Do
23 you see that?

24 A. I do.

25 Q. All right. Do you have an opinion about how

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1 many crimes go unreported in Austin?

2 A. I don't have a specific estimation of
3 underreporting, but we know there are some crimes that
4 are more underreported than others, based on historical
5 knowledge.

6 Q. Is that something that APD tracks on a
7 statistical basis?

8 A. We do not because we don't -- we don't know
9 what's not being reported.

10 Q. Right. Do you know how -- or do you -- rather,
11 do you have an opinion about how the rate of potential
12 underreporting of crime has changed over the years?

13 A. Again, since we can't track the level to which
14 it's underreported, we really can't track the change in
15 the level of underreporting.

16 Q. Okay. So you don't know whether prior to the
17 2012 issuance of the DACA memorandum, underreporting
18 crime may have been the same, different or lower or
19 higher than after the implementation of DACA?

20 A. No, sir.

21 Q. All right. Let me ask that a different way
22 that's a bit more clear perhaps. You don't know whether
23 the underreporting of crime has changed pre- and
24 post-DACA enactment, right?

25 A. Correct.

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1 being reported and more opportunities to capture
2 criminals. So, yes, I do believe as an end result of
3 that that we would be safer.

4 Q. Austin would be safer if the risk of
5 deportation was less?

6 A. Correct.

7 Q. If the President came out and said, I am no
8 longer going to deport anybody in the United States for
9 any reason, would that make Austin safer, in your
10 opinion?

11 MS. MORENO: Objection, calls for
12 speculation.

13 A. I would go back to my earlier comment that if
14 we have people that are not fearful of being deported,
15 then they're more likely to come forward and report
16 victimization; so I think that that would make a
17 community safer.

18 Q. (BY MR. DISHER) So if the President said, I'm
19 ending all threat of deportation to everybody, that
20 would make Austin safer?

21 MS. MORENO: Objection, calls for
22 speculation.

23 A. For those that might not come forward for fear
24 of deportation, yes, I think they would be more likely
25 to come forward.

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1 A. -- is removed, then, yes. Not testifying to if
2 the threat of deportation against those that are
3 committing crimes, because if they feel emboldened by
4 that, then that would not.

5 Q. Okay. Understand.

6 All right. Let's jump to paragraph 19.
7 You say -- and we talked about this briefly earlier.
8 But you say, I do not profess to be an expert on the
9 DACA program. That's true, right?

10 A. Correct.

11 Q. Okay. So what do you know about the DACA
12 program?

13 A. It's deferred action. It's for, my
14 understanding, normally individuals that are here, maybe
15 students going to school, that any deportation action or
16 immigration enforcement would be deferred for a period
17 of time.

18 Q. All right. Do you know when DACA was enacted?

19 A. No.

20 Q. Do you know how many people in Austin are DACA
21 recipients?

22 A. No.

23 Q. Do you know how many in Texas are DACA
24 recipients?

25 A. No.

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1 Q. What about nationwide?

2 A. No.

3 Q. All right. Do you know what the eligibility
4 requirements are for DACA recipients?

5 A. No, sir.

6 Q. Do you know the rate of crime reporting by DACA
7 recipients before DACA was enacted?

8 A. No, sir.

9 Q. Do you know the rate of crime reporting by DACA
10 recipients after DACA was enacted?

11 A. No, sir.

12 Q. Have you ever talked to somebody who has
13 received DACA about their DACA status?

14 A. There was one forum I was at and it's a young
15 man who came through our Explorer Program, and I believe
16 he was in the DACA program. That's my only
17 recollection.

18 Q. Just that one?

19 A. Yes.

20 Q. All right. Do you remember what you talked to
21 that one person about regarding his DACA status?

22 A. Well, we were actually talking about his
23 interest in becoming a police officer and his status or
24 his work towards gaining citizenship so he could apply
25 to be a police officer.

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1 Q. Did you talk about his willingness to report
2 crime?

3 A. No.

4 Q. And as far as you can remember, that's the only
5 person, that you know of, you have talked to about DACA
6 status?

7 A. Yes.

8 Q. Okay. Has anybody with DACA status told you, I
9 am less likely to report crime should my DACA status be
10 revoked?

11 A. No. In the forums, when people were speaking
12 to that issue, I don't know whether or not they were
13 DACA recipients. That wasn't linked to the
14 conversations about being fearful of coming forward
15 given their status.

16 Q. Understood. The next sentence says -- or,
17 rather, I skipped over one phrase. The end of that
18 first sentence says, "or immigration law in general."
19 You're not an immigration law expert?

20 A. No, sir.

21 Q. All right. And you're not a lawyer?

22 A. No, sir.

23 Q. Not a sociologist?

24 A. No, sir.

25 Q. All right. A demographer?

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1 apply for deferred action pursuant to the DACA program?

2 A. I don't know the process.

3 Q. Do you know what forms an individual has to
4 fill out?

5 A. No.

6 Q. All right. Do you know whether -- or I guess
7 maybe let me ask specifically: How did you know that an
8 individual who applies for DACA gets registered,
9 photographed and fingerprinted?

10 A. That was part of the back-and-forth that I had
11 with MALDEF.

12 Q. MALDEF told you about that?

13 A. That came through in the affidavit, yes, sir.

14 Q. Okay. And then, finally, I just want to go
15 back to kind of where we began. And other than in
16 paragraph 19 where you say, I do not profess to be an
17 expert on the DACA program, can you point me to specific
18 portions of this declaration that you, yourself,
19 authored?

20 A. As far as like a complete number; is that what
21 you are talking about?

22 Q. Or even portions within the number. I just
23 want to know which words in this declaration you,
24 yourself, wrote.

25 A. All right. Give me a few minutes, then, and

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1 let me go through it.

2 Q. Take all the time you need.

3 A. Most of these early bullets have come off of
4 public sourcing. Are you concerned about grammatical
5 corrections that I may have made or only important --
6 and I'm not trying to be so, but, I mean, do you want me
7 to talk about all of that or just substantive changes?

8 Q. Anything you can remember.

9 A. Well, I made a lot of capitalization changes in
10 bullet 3 because all of our units are actually
11 capitalized. And so, again, I made grammatical to that
12 individual paragraph; however, the information in there
13 was accurate when I received it.

14 Q. Okay.

15 A. Prior to bullet 18 -- really, it's 18, 19 and
16 20 where there was the -- I guess the back-and-forth on
17 the actual content, those being the -- probably the
18 three most specific to the issues we're discussing
19 today. Most of the other is just my background, my
20 history, and all of that is really from public sourcing.

21 Q. Let me pause right there, then. Paragraph 11,
22 for example, paragraph 11 was included in the draft that
23 you received from MALDEF?

24 A. Paragraph 11 was included. And in paragraph 11
25 there was -- my recollection is there was a reference to

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1 me experiencing underreporting of crime, and I removed
2 that because I did not experience that here in Austin,
3 as was experienced in Houston.

4 Q. Explain that to me.

5 A. There was work done in Houston, Chief Acevedo,
6 where post-SB 4, they looked at reporting within their
7 immigrant community, basically focusing, I believe, on
8 the Hispanic community, and they saw marked drop in
9 reporting in the Hispanic community. We conducted a
10 similar study here in Austin to see if that was
11 occurring here, and we did not see that same drop. And
12 so I was not comfortable with putting it here that that
13 was a local issue. However, I am aware that it is an
14 issue in communities across -- well, at least Houston
15 and then, I believe, Los Angeles, based on reporting
16 that I've read. So I made that more specific to
17 policing in general and not a local issue.

18 Q. Understand. So that was something that you
19 removed from paragraph 11?

20 A. Yes, sir.

21 Q. Did you add anything to paragraph 11?

22 A. Other than reformatting the sentence to remove
23 my direct experience, I believe that this is the way it
24 came to me based on the conversations that I had had
25 with MALDEF when we first communicated on this.

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1 Q. Okay. Let's talk about that survey for a
2 minute. So there was a survey done in Austin?

3 A. Not a survey. We looked at crime reporting.
4 We looked at the number of reported crime victims that
5 were of Hispanic descent. That's how we track in our
6 system. And we compared that pre-SB 4 and post-SB 4 to
7 see if we saw a reduction in reporting.

8 Q. Okay. And you did not see a reduction in
9 reporting?

10 A. Not in Austin, no.

11 Q. All right. Okay. Paragraph 16, did you write
12 anything that is included in paragraph 16?

13 A. I don't believe that I wrote that. However,
14 that is language that I regularly use when I speak about
15 it. So I believe that it is coming from the
16 conversations that I had with MALDEF ahead of the
17 preparation of this, but I don't believe physically that
18 I wrote that.

19 Q. All right. Was there anything else included in
20 paragraph 16 that you took out?

21 A. Not to my recollection.

22 Q. All right. So then starting at paragraph 18,
23 what changes did you make to paragraph 18?

24 A. You know, I ended up putting it back, so -- and
25 it was just the title. I had initially changed it to an

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1 photographed and fingerprinted?

2 A. I didn't understand the full process that they
3 go through to be a DACA recipient.

4 Q. Okay. And so that's a long way of saying no,
5 you didn't know that DACA recipients were photographed,
6 registered and fingerprinted?

7 A. Correct.

8 Q. All right. Lastly, I just want to introduce
9 this.

10 (Exhibit Number 3 was marked)

11 Q. Have you seen Exhibit 3 before?

12 A. I'm believing this may have been my declaration
13 in the SB 4 lawsuit.

14 Q. Is that what it is?

15 A. I believe that's what this is.

16 Q. All right. And what was your involvement in
17 the SB 4 lawsuit?

18 A. I was asked to put forward a declaration, as is
19 evidenced here, with my beliefs on SB 4 and its impacts.

20 Q. Okay. Who asked you to put forth that
21 declaration?

22 MR. COPPOLA: I'll object to certain
23 attorney-client privilege. The City was a party in that
24 case, and Chief Manley worked with the City Attorney's
25 office.

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11 | REPORTER'S CERTIFICATION

12 DEPOSITION OF BRIAN MANLEY

13 JUNE 20, 2018

15 I, Christi Sanford, Certified Shorthand
16 Reporter in and for the State of Texas, hereby certify
17 to the following:

18 That the witness, BRIAN MANLEY, was duly sworn
19 by the officer and that the transcript of the oral
20 deposition is a true record of the testimony given by
21 the witness;

22 That the original deposition was delivered to
23 Todd Lawrence Disher, Custodial Attorney;

24 That a copy of this certificate was served on
25 all parties and/or the witness shown herein on

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1 I further certify that pursuant to FRCP No.
2 30(f)(i), the signature of the deponent:

3 X was requested by the deponent or a party
4 before the completion of the deposition and that the
5 signature is to be returned within 30 days from date of
6 receipt of the transcript. If returned, the attached
7 Changes and Signature page contains any changes and the
8 reasons therefor;

9 ____ was not requested by the deponent or a
10 party before the completion of the deposition and that
11 it is being delivered to Todd Lawrence Disher.

12 I further certify that I am neither counsel
13 for, related to, nor employed by any of the parties or
14 attorneys in the action in which this proceeding was
15 taken. Further, I am not a relative or employee of any
16 attorney on record in this case, nor am I financially or
17 otherwise interested in the outcome of the action.

18 | Certified to by me this 22nd day of June, 2018.

Christi Saiford

Christi Sanford, CSR, CRR, RPR
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